

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SECOND APPEAL No. 52 of 2003****For Approval and Signature:****HONOURABLE MR.JUSTICE R.S.GARG**

- =====
- 1 Whether Reporters of Local Papers may be allowed to see the judgment ?
 - 2 To be referred to the Reporter or not ?
 - 3 Whether their Lordships wish to see the fair copy of the judgment ?
 - 4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
 - 5 Whether it is to be circulated to the civil judge ?

=====

STATE OF GUJARAT - THRO' HOME SECRETARY & 2 -
Appellant(s)
Versus
PRAVINBHAI ARVINDBHAI - Defendant(s)

=====

Appearance :

MR DIPEN DESAI, AGP for Appellant(s) : 1 - 3.
MR KISHOR M PAUL for Respondent

=====

CORAM : HONOURABLE MR.JUSTICE R.S.GARG**Date : 25/08/2006****ORAL JUDGMENT**

1. Mr. Dipen Desai, learned AGP for the appellant
and Mr. Kishor M. Paul, learned counsel for the

respondent.

2. Present is a Second Appeal by the State Government, which has lost before the two courts. The short facts necessary for disposal of the present appeal are that, the present respondent-plaintiff was taken into police services by order of appointment and was to continue on probation for a period of 15 months from the date of his joining. The plaintiff joined the services on 21.9.96. It is not in dispute before me that he was appointed as Un-Armed Police Constable and was required to undergo training at Baroda and after completion of the training he was posted at Bhadla Police Station. It is submitted that while he was on duty, a false complaint was lodged against him, the Investigating Officer submitted charge sheet before the Judicial Magistrate First Class, Jasdan and Criminal Case No. 91/98 was registered. The plaintiff was acquitted by the learned Judicial Magistrate First Class on 26.2.99. However, in between without making any inquiry or giving any opportunity of hearing or

any notice to the plaintiff, he was removed from the services under order dated 29.12.97. The plaintiff being aggrieved by the discharge/removal/termination, filed Civil Suit No.1062/99 in the court of 8th Jt. Civil Judge (Senior Division), Rajkot. The defendants appeared before the said Court and submitted their reply and contended that the plaintiff was probationer, he could be removed at any time without assigning any cause and in any case, notice was not required to be issued. The trial court, after recording evidence and hearing the parties, decreed the suit on the ground that present was a case where, opportunity of hearing ought to have been afforded to the plaintiff and the termination was illegal. The said findings were confirmed in appeal, therefore, the defendants are in this Court under Section 100 of the Code of Civil Procedure. On 29.7.03, the appeal has been admitted for hearing on the following substantial question of law.

“Whether, in the facts and circumstances of

the case, the courts below have erred in law in setting aside the order of termination?"

3. Mr. Dipen Desai, learned AGP for the appellants submits that present is a case where the government exercised its appointing authority, discharged the plaintiff during the course of the probation and as no reasons were required to be assigned, the plaintiff could not say that he was entitled to be heard. He submits that even otherwise, in a given case, where period of probation is terminated, hearing is not required to be afforded. Placing reliance upon the judgment of the Supreme Court in the matter of **Abhijit Gupta Vs. S.N.B. National Centre, Basic Sciences and others, [2006 [4] SCC 469]**, it is submitted that the record of dissatisfactory services in itself would be sufficient to terminate the probation. On the other hand, Mr. Kishor M. Paul, learned counsel for the respondent-plaintiff has supported the judgment, submitting, inter alia, that present is not a case where because of the dissatisfactory

services and conduct, probation period has been terminated. According to him, the appointing authority in its order dated 29.12.97 has observed that the services were no more required. He submits that in the continuous services, where people come and go, specially in the constabulary of the State Government, no government can say that the services of a Police Constable are not required.

4. In the matter of Abhijit Gupta [supra], notice terminating the probation clearly stated that the services were far from satisfactory and thereafter, it was observed that the incumbent lacked a drive, imagination and initiative in the performance of his duties. The order also observed that the incumbent was informed time and again and despite being told to improve performance in the said areas, nothing has been done. In the said matter, the probation was terminated on the ground of dissatisfactory services.

5. In the present case, the order dated 29.12.97 simply says that the services of the plaintiff

who is on probation are no more required. He has not been discharged from services on the ground of dissatisfactory services or unsatisfactory conduct. The order does not say that he could not improve himself up to the standard or he was a rotten apple which was required to be thrown out. Present is a case where, the State says that the services are no more needed. No government, which is having constabulary can ever say that the services of a Constable or personnel in the department are not needed. Mr. Dipen Desai, learned AGP took extra pains to take me through the entire pleadings and findings while making submission that if no reasons are assigned in the order and even if it is wrongly stated that his services are not needed, the Court must look into the real reasons. In the opinion of this Court, when the order itself is unambiguous, clear in terms and does not need any interpretation, then, the Court would be governed by the language employed in the order and not by the intention which was behind the action.

6. The courts below, though have held that the order was bad, because, no opportunity of hearing was afforded, in the opinion of this Court even on the above-referred discussion, the order terminating the services cannot be upheld. The appeal deserves to and is accordingly dismissed. No costs. Decree be framed accordingly.

[R.S. GARG, J.]

pirzada/-